

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHERYL KATER and SUZIE KELLY, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation, and BIG FISH GAMES,  
INC., a Washington corporation,

Defendants.

MANASA THIMMEGOWDA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington  
corporation; ARISTOCRAT TECHNOLOGIES  
INC., a Nevada corporation; ARISTOCRAT  
LEISURE LIMITED, an Australian corporation; and  
CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation,

Defendants.

CASE NO. C15-0612-RBL

ORDER ON MOTION FOR  
ENTRY OF MODEL  
PROTECTIVE ORDER  
AND AGREEMENT FOR  
DISCOVERY OF ESI

DKT. # 192

CASE NO. C19-0199-RBL

ORDER ON MOTION FOR  
ENTRY OF MODEL  
PROTECTIVE ORDER  
AND AGREEMENT FOR  
DISCOVERY OF ESI

DKT. # 143

1       THIS MATTER is (unfortunately) before the Court on Plaintiffs' Motions for Entry of  
2 Model Protective Order and Model Agreement re. Discovery of Electronically Stored  
3 Information. *Kater*: Dkt. # 192; *Thimmegowda*: Dkt. # 143. As has become a trend in these  
4 cases, the parties have found yet another thing to disagree on. While Plaintiffs advocate for entry  
5 of the Western District of Washington's model order and agreement re. ESI, Defendants  
6 strenuously object.

7       According to Plaintiffs, the parties have been negotiating an appropriate protective order  
8 and agreement for sixteen months, with Defendants consistently demanding nuanced provisions  
9 that would prejudice Plaintiffs. Plaintiffs assert that the parties are in deadlock and the easiest  
10 way forward would be to just enter the Western District's model orders. Defendants retort that,  
11 during the course of negotiations, the parties agreed at various times to various manifestations of  
12 protective orders, but that Plaintiffs reneged on these agreements and ultimately abandoned the  
13 negotiations in favor of court intervention. Defendants also object to Plaintiffs' failure to meet  
14 and confer in good faith before bringing these motions, as required by Local Rule 26(c)(1).  
15 Instead of entering the model orders, Defendants ask the Court to enter their orders, which they  
16 claim reflect the parties' negotiations. Plaintiffs reply that Defendants fail to explain how the  
17 model orders prejudice them, while Defendants' own revised versions actually will prejudice  
18 Plaintiffs by, for example, allowing Defendants to share Plaintiffs' confidential information with  
19 non-appearing counsel. Both parties' briefs are littered with accusations that the other party is  
20 being vexatious and unfair and deceptive. Defendants go so far as to ask for sanctions.

21       Asking the Court to wade into a negotiation process that has been going on for over a  
22 year is not a good way to resolve this dispute. From the Court's perspective, both parties have  
23 been unreasonable. Nonetheless, the Court agrees with Plaintiffs that discovery needs to get  
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1 moving in these cases, one of which was filed in 2015, and which Defendants have been  
2 attempting to drag out in any way possible.

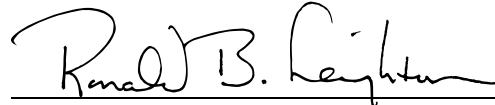
3 Out of the two dueling proposals, the Court agrees with Plaintiffs that Defendants have  
4 failed to explain how the Western District's model orders will prejudice them, even if they don't  
5 fulfill every item on their wish list. *Corley v. Google, Inc.*, No. 16-cv-00473, 2016 WL 3421402,  
6 at \*2 (N.D. Cal. June 22, 2016) (rejecting defendants' argument that the protective orders  
7 developed by the parties through their negotiations should be adopted instead of the model  
8 orders). In contrast, Plaintiffs identify several forms of potential prejudice in Defendants'  
9 modified orders. And Defendants' insistence that Plaintiffs agreed to provisions from their orders  
10 at times in the past rings hollow in light of the parties' failure to ever submit such stipulations to  
11 the Court. Plaintiffs should have met and conferred with Defendants before bringing this order,  
12 but the Court suspects that after months of disagreement such a meeting would likely have been  
13 futile.

14 The model order is the model for a reason—it was “drafted and approved by the judges of  
15 this district based on their collective experience managing numerous cases with confidential  
16 material.” *Minnis v. Washington*, No. C11-5600 BHS, 2013 WL 3189051, at \*2 (W.D. Wash.  
17 June 20, 2013). Entry of the model orders will not prevent the parties from stipulating to certain  
18 revisions or additions and filing more mutually-agreeable orders in the future. It will, however,  
19 provide a foundation that will allow discovery to move forward. If the parties reach an impasse  
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1 and Defendants feel that they cannot engage in certain discovery without further protection, they  
2 may file a motion to that effect. Plaintiffs' Motions are GRANTED.

3 IT IS SO ORDERED.

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5 Dated this 5<sup>th</sup> day of May, 2020.

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8 Ronald B. Leighton  
9 United States District Judge  
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